

John G. Esposito, Jr.

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1 But you can answer the question. 2 A. Correct. 3 BY MR. SAVERY: 4 Q. Okay. 5 (Whereupon, Exhibit 46 was marked for 6 identification.) 7 BY MR. SAVERY: 8 Q. Okay. I'm showing you, sir, now 9 what's been marked Exhibit 46. Have you seen 10 this document before? 11 A. Yes. 12 Q. And what is it? 13 A. It's the account, my buying of the 14 stocks for me by Mr. Harris. 15 (Witness reviewing document.) 16 BY MR. SAVERY: 17 Q. And were you aware this document was 18 produced in this litigation? 19 A. I beg your pardon? 20 Q. Were you aware that your lawyers 21 produced this document to the Defendants in this 22 litigation? 23 A. Yes. 24 Q. Is this a document you provided to		1 BY MR. SAVERY: 2 Q. Did you provide any documents to Mr. 3 Longman at any point in time concerning your 4 accounts, any of your investments? 5 A. No. 6 MR. LONGMAN: Other than this document 7 obviously. 8 A. I think you said other, right. 9 MR. SAVERY: He just said he didn't 10 produce that to you. 11 MR. LONGMAN: He caused it to be 12 produced. He told the broker to cooperate and 13 give it to me. 14 BY MR. SAVERY: 15 Q. Do you know whether you caused anyone 16 else to produce any documents to your lawyers in 17 this case? 18 A. No. 19 Q. Just bear with me for a minute, 20 please. 21 A. No problem. 22 (Pause.) 23 BY MR. SAVERY: 24 Q. Okay. When was your first purchase of
1 your lawyers? 2 A. Through Mr. Harris. 3 MR. LONGMAN: Asked and answered. 4 BY MR. SAVERY: 5 Q. If you look at Exhibit 46 and turn it 6 sideways, you see a fax line? 7 A. Up here (indicating)? 8 Q. Yes. 9 A. Yes. 10 Q. The number on the right looks like 11 "912-125-81," and I can't read the last digits. 12 Are you seeing that as well? 13 A. Yes. 14 Q. Is that your fax number, can you tell? 15 A. No, it's not. 16 Q. All right. So this isn't a document 17 that you obtained yourself from Mr. Harris? 18 A. Correct. 19 Q. Okay. Your understanding is it was 20 sent directly from Harris to Mr. Longman? 21 A. Correct. 22 Q. Okay. 23 MR. LONGMAN: For the record, it's not 24 mine either.	Page 91	1 Biopure stock? What was the date? 2 A. August of '03, August 11th. 3 Q. And prior to August 11th of 2003, you 4 never held any shares of Biopure? 5 A. Correct. 6 MR. LONGMAN: The document shows the 7 12th, by the way. 8 A. 12th. 9 BY MR. SAVERY: 10 Q. Okay. I'm going to show you now 11 another document. 12 (Whereupon, Exhibit 47 was marked for 13 identification.) 14 BY MR. SAVERY: 15 Q. I'm showing you now what's been marked 16 Exhibit 47. Have you seen this document before? 17 A. Yes. 18 Q. Do you know who prepared this 19 document? 20 A. I believe it was Mr. Longman. 21 Q. Okay. Is that your signature at the 22 bottom of this document? 23 A. Yes. 24 Q. And did you sign this document under

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<p>1 the penalty of perjury, paragraph eight?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Did you read the document</p> <p>4 before you signed it?</p> <p>5 A. I would assume that I did.</p> <p>6 Q. Okay. Do you have any recollection of</p> <p>7 reading it before you signed it?</p> <p>8 A. I can't -- when was this dated,</p> <p>9 January of '04? I don't really recall</p> <p>10 completely. That's a long time ago.</p> <p>11 Q. Did you review the document for its</p> <p>12 accuracy before you signed it?</p> <p>13 MR. LONGMAN: Objection.</p> <p>14 He just said he doesn't recall.</p> <p>15 MR. SAVERY: I don't want any more</p> <p>16 speaking objections on the record, okay? If you</p> <p>17 have an objection you can state it.</p> <p>18 MR. LONGMAN: I don't want any more</p> <p>19 repetitive questions.</p> <p>20 MR. SAVERY: If you have an</p> <p>21 objection --</p> <p>22 MR. LONGMAN: You don't make</p> <p>23 objectionable questions and I won't make</p> <p>24 objectionable answers.</p>	<p>Page 94</p> <p>1 A. Mm-hmm.</p> <p>2 Q. Was that typed in when you saw this</p> <p>3 document and signed it?</p> <p>4 MR. LONGMAN: Do you have another copy</p> <p>5 of this, by the way?</p> <p>6 MR. SAVERY: Yes, I do (handing).</p> <p>7 A. I could only assume that it was.</p> <p>8 BY MR. SAVERY:</p> <p>9 Q. Okay. You can't say for sure one way</p> <p>10 or the other?</p> <p>11 A. No, it's been two years -- over a year</p> <p>12 certainly.</p> <p>13 MR. LONGMAN: Would you read that</p> <p>14 question back?</p> <p>15 (Whereupon, the reporter read back the</p> <p>16 above question and answer.)</p> <p>17 BY MR. SAVERY:</p> <p>18 Q. Do you see this third item here?</p> <p>19 A. Yes.</p> <p>20 Q. It says "August 5th, '03, sale, 520</p> <p>21 shares, price per share \$7.50." And just for</p> <p>22 completeness, let's just read the introduction</p> <p>23 to that list in paragraph four, "to the best of</p> <p>24 my current knowledge, I purchased the following</p>
<p>1 MR. SAVERY: If you have an objection</p> <p>2 you can state it on the record pursuant to Rule</p> <p>3 30D, okay? I don't want any suggestive</p> <p>4 objections, it's improper, and I think you know</p> <p>5 that well enough. I want an answer from the</p> <p>6 witness, please, without the coaching.</p> <p>7 MR. LONGMAN: I don't understand that</p> <p>8 to be coaching in any way, shape or form, but I</p> <p>9 object to the characterization.</p> <p>10 A. Repeat the question, please.</p> <p>11 (Whereupon, the reporter read back the</p> <p>12 pending question.)</p> <p>13 A. I can only say I presume I did. It</p> <p>14 was in January of '04.</p> <p>15 BY MR. SAVERY:</p> <p>16 Q. Okay.</p> <p>17 A. It would seem to me that just the</p> <p>18 dates and the shares, that's pretty apparent, so</p> <p>19 I'm sure that's what I would -- I had seen.</p> <p>20 Q. Okay. Focusing on paragraph four, do</p> <p>21 you see that there are a number of transactions</p> <p>22 listed there?</p> <p>23 A. Yes.</p> <p>24 Q. Three of them?</p>	<p>Page 95</p> <p>1 shares of Biopure during the class period</p> <p>2 referenced in the complaint:" and then as we</p> <p>3 said the third item listed is August 5th, '03, a</p> <p>4 sale, 520 shares, \$7.50.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Is that correct?</p> <p>8 A. I can't tell you, I don't really know.</p> <p>9 I presume it was. If I had signed it and I</p> <p>10 reviewed it at the time, then I must have</p> <p>11 conferred with Mr. Harris, and I presume that</p> <p>12 it's correct.</p> <p>13 Q. Do you have a recollection of</p> <p>14 conferring with Mr. Harris regarding paragraph</p> <p>15 four before signing this?</p> <p>16 A. No.</p> <p>17 Q. Okay. Did you refer to any documents</p> <p>18 before you signed this?</p> <p>19 A. I really don't have any recall with</p> <p>20 this particular thing.</p> <p>21 Q. Okay. In fact, you wouldn't have had</p> <p>22 any documents on hand regarding your account at</p> <p>23 the time you signed this, is that right?</p> <p>24 A. Right.</p>

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<p style="text-align: right;">Page 98</p> <p>1 Q. And as you sit here, you cannot say 2 one way or the other whether you sold shares of 3 Biopure on August 5th, 2003? 4 A. No. 5 Q. Okay. And you can't say one way or 6 the other whether you purchased Biopure prior to 7 August 5th, 2003, is that fair? 8 A. Correct. My recall was everything was 9 done in August, so I don't -- this is -- I don't 10 recall this. Why wouldn't he have that in my -- 11 MR. LONGMAN: Don't. 12 THE WITNESS: I'm sorry, I'm talking 13 to myself. 14 BY MR. SAVERY: 15 Q. Is this transaction here that's 16 listed, this third one, the sale of Biopure 17 shares on August 5th, 2003, is this something 18 that you're complaining about in this action? 19 MR. LONGMAN: Objection. Vague and 20 ambiguous. 21 A. I would say no. 22 BY MR. SAVERY: 23 Q. Okay. 24 A. Because, first of all, I don't have</p>	<p style="text-align: right;">Page 100</p> <p>1 BY MR. SAVERY: 2 Q. Right. 3 A. Right. 4 Q. Before you purchased Biopure, did Mr. 5 Harris actually recommend that you buy it? 6 MR. LONGMAN: Objection. Asked and 7 answered. 8 A. No. 9 BY MR. SAVERY: 10 Q. Okay. 11 A. The reason why I remember that vividly 12 is because it's rare that I bring something to 13 him, so the two were that I remember were Merck 14 and this that I brought to him, because again 15 I'm not that interested or involved with it. 16 Q. Do you know what the price of the 17 Biopure shares was that you bought on August 18 12th? 19 A. It says \$7.01 per share. 20 Q. I'd like to turn to Exhibit 46. Do 21 you see what the purchase price is in that 22 exhibit? 23 A. Yes. 24 Q. Can you tell me what it was?</p>
<p style="text-align: right;">Page 99</p> <p>1 the recall of the sale, and no, that would not 2 be in the complaint, it would be the purchasing. 3 Q. Okay. Regarding the August 12th 4 purchase of Biopure shares, and again I'll refer 5 back to Exhibit 46, do you see on page two of 6 this exhibit it looks like there are two entries 7 in this list relating to a purchase on August 8 12th. 9 Do you see that? 10 A. Yes. 11 Q. What I'd like to focus on is the word 12 "solicited." Do you see that after "Biopure 13 Corp. Class A" the word "solicited" appears? 14 A. Yes. 15 Q. Do you have an understanding of what 16 that word means? 17 A. No. 18 Q. Okay. But it's your recollection that 19 Mr. Harris didn't contact you to recommend that 20 you buy Biopure? 21 MR. LONGMAN: Objection. Asked and 22 answered. 23 A. I contacted him first, is that what 24 you mean?</p>	<p style="text-align: right;">Page 101</p> <p>1 A. \$7.01. 2 Q. For how many shares? 3 A. Quantity, I think it was 100 shares. 4 Q. Okay. And how many did you buy on the 5 12th? 6 A. Apparently I bought 600 in all, 500 on 7 the top and 100 on the bottom. 8 Q. And what was the price of the 500? 9 A. \$700 -- I mean \$7 a share. 10 Q. \$7 per share? 11 A. Mm-hmm. 12 Q. And again turning to Exhibit 47 then, 13 your certification. 14 A. Yes. 15 Q. Am I correct the certification says 16 you purchased on August 12th, 2003 600 shares at 17 \$7.01? 18 A. Yes. 19 Q. But in truth it was \$7.01 for 100 of 20 the shares and \$7.00 even for 500, is that 21 right? 22 MR. LONGMAN: According to this 23 document. 24 A. Apparently.</p>

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<p>1 BY MR. SAVERY:</p> <p>2 Q. Did you take any steps to verify the</p> <p>3 accuracy of the information in this document</p> <p>4 before you signed it, sir?</p> <p>5 A. I can't recall.</p> <p>6 Q. Okay. Do you know where this</p> <p>7 information in paragraph four came from?</p> <p>8 A. I have no idea.</p> <p>9 Q. You didn't type it in, right?</p> <p>10 A. No.</p> <p>11 Q. Did you think it was important for you</p> <p>12 to verify the accuracy of the information that</p> <p>13 was contained in the document that you were</p> <p>14 signing under penalty of perjury?</p> <p>15 MR. LONGMAN: Objection. Objection.</p> <p>16 A. I'm sure I assumed that Mr. Harris</p> <p>17 did, you know, I just -- when I do these things,</p> <p>18 when I look at these things, like this report,</p> <p>19 why would I think there's -- it's not accurate?</p> <p>20 You know, I wouldn't even think that way. Same</p> <p>21 with the numbers here.</p> <p>22 BY MR. SAVERY:</p> <p>23 Q. You were referring first to, I just</p> <p>24 want to for purposes of the record, to Exhibit</p>	<p>Page 102</p> <p>1 BY MR. SAVERY:</p> <p>2 Q. Do you have any knowledge that Mr.</p> <p>3 Harris gave your lawyers any documents prior to,</p> <p>4 say, the last month?</p> <p>5 MR. LONGMAN: Object.</p> <p>6 A. No, I have no knowledge.</p> <p>7 BY MR. SAVERY:</p> <p>8 Q. Okay. As of August 12th, did you have</p> <p>9 any understanding of Biopure's effort to secure</p> <p>10 FDA approval from Hemopure?</p> <p>11 A. As of August 12th, it was my</p> <p>12 understanding that they were in the midst of</p> <p>13 trials to get FDA approval, yes.</p> <p>14 Q. Have you ever heard the term "BLA"?</p> <p>15 A. No.</p> <p>16 Q. Okay. Have you heard the term</p> <p>17 "biologics license application"?</p> <p>18 A. Not exactly that way, no.</p> <p>19 Q. Okay. Did you understand there was</p> <p>20 some application that was pending with the FDA</p> <p>21 regarding this product?</p> <p>22 A. Yes.</p> <p>23 Q. What was your understanding relative</p> <p>24 to that as of August 12th?</p>
<p>1 46?</p> <p>2 A. 46.</p> <p>3 So on 47, which I don't even recall</p> <p>4 this form at all, I must have had the same</p> <p>5 mindset concerning numbers of shares bought and</p> <p>6 sold, I just assumed that it was from Mr.</p> <p>7 Harris, and he would have the accurate. I</p> <p>8 wouldn't have any other way to check it.</p> <p>9 Q. Okay. Do you know whether your</p> <p>10 lawyers had contacted Mr. Harris prior to, say,</p> <p>11 the last three or four weeks?</p> <p>12 A. No.</p> <p>13 MR. LONGMAN: I'm sorry, what three or</p> <p>14 four weeks?</p> <p>15 MR. SAVERY: He had testified earlier</p> <p>16 that at some point in the last three or four</p> <p>17 weeks he contacted Mr. Harris to let him know</p> <p>18 that you were going to be speaking with him.</p> <p>19 BY MR. SAVERY:</p> <p>20 Q. Prior to that, do you have any</p> <p>21 knowledge that your lawyers contacted Mr.</p> <p>22 Harris?</p> <p>23 A. No.</p> <p>24 MR. LONGMAN: Asked and answered.</p>	<p>Page 103</p> <p>1 A. My understanding was that the company</p> <p>2 was involved in ongoing trials to apply for FDA</p> <p>3 approval for the drug in general.</p> <p>4 Q. Do you have an understanding of,</p> <p>5 general understanding of how the approval</p> <p>6 process works?</p> <p>7 A. Not really, no. A series of trials,</p> <p>8 and the FDA will eventually approve or</p> <p>9 disapprove.</p> <p>10 Q. Did you have a sense as of August</p> <p>11 12th, 2003 when it was that the FDA was expected</p> <p>12 to approve or disapprove of Hemopure?</p> <p>13 A. No.</p> <p>14 Q. Had you as of August 12th, 2003 heard</p> <p>15 the term "IND"?</p> <p>16 A. IND?</p> <p>17 Q. Yes.</p> <p>18 A. There's a term like that in my</p> <p>19 practice, I don't know -- I don't know what</p> <p>20 you're referring to.</p> <p>21 Q. Have you --</p> <p>22 A. It's called incision and drainage.</p> <p>23 Q. Okay. That's not it fortunately.</p> <p>24 Even as you sit here today, relative</p>

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<p style="text-align: right;">Page 106</p> <p>1 to this case, are you aware of the term IND?</p> <p>2 A. No.</p> <p>3 Q. Who is Carl Rausch?</p> <p>4 A. He is one of the principals of the</p> <p>5 company, I believe he was the technical head.</p> <p>6 Q. Okay. Do you have any other</p> <p>7 understanding of his role at Biopure?</p> <p>8 A. No, just that he was one of the</p> <p>9 principals.</p> <p>10 Q. Okay. And when you say "principals,"</p> <p>11 what do you mean by "principals"?</p> <p>12 A. High ranking, high ranking</p> <p>13 involvement.</p> <p>14 Q. Is he a Defendant in this case?</p> <p>15 A. Yes.</p> <p>16 Q. How about Ronald Richards?</p> <p>17 A. Yes.</p> <p>18 Q. Is he a Defendant in this case?</p> <p>19 A. Yes.</p> <p>20 Q. Is he associated with Biopure, or was</p> <p>21 he at the time of the underlying conduct?</p> <p>22 A. I understand that he was, yes.</p> <p>23 Q. And what was his role at Biopure?</p> <p>24 A. I believe CFO.</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Do you know what the name of this case</p> <p>2 is, this litigation, the title of the case?</p> <p>3 A. The title of the case, no.</p> <p>4 Q. Do you know in what court the case is</p> <p>5 pending?</p> <p>6 A. No.</p> <p>7 Q. Okay. In what state?</p> <p>8 A. Massachusetts, I believe.</p> <p>9 Q. What is a class period?</p> <p>10 A. It is the period of time where the</p> <p>11 Plaintiffs have purchased stock.</p> <p>12 Q. Okay. And what is the class period in</p> <p>13 this case?</p> <p>14 A. From April, I think April 9th of '03</p> <p>15 to December 24th.</p> <p>16 Q. Okay. Have you heard the term</p> <p>17 "complete response letter"?</p> <p>18 A. Yes.</p> <p>19 Q. What's a complete response letter?</p> <p>20 A. That's when the FDA will send a final</p> <p>21 notice with their concerns to a company. In</p> <p>22 this case I could further answer that.</p> <p>23 Q. Sure.</p> <p>24 A. I think it was in July they sent one</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. Have you heard the name Howard</p> <p>2 Richman?</p> <p>3 A. Yes.</p> <p>4 Q. Is he associated with Biopure, or was</p> <p>5 he?</p> <p>6 A. Richman was -- yes, I believe he was</p> <p>7 on the board of directors.</p> <p>8 Q. Any other role relative to Biopure?</p> <p>9 A. I don't -- I don't know.</p> <p>10 Q. Have you heard of C. Everett Koop?</p> <p>11 A. Koop, yes.</p> <p>12 Q. Who was he?</p> <p>13 A. He was the past Secretary of Health.</p> <p>14 Q. Does he have any connection with</p> <p>15 Biopure?</p> <p>16 A. I have no idea.</p> <p>17 Q. Have you heard of Thomas Moore?</p> <p>18 A. Yes.</p> <p>19 Q. Who was he?</p> <p>20 A. He was again a higher ranking official</p> <p>21 at Biopure. I don't know if he was CEO or</p> <p>22 president.</p> <p>23 Q. Have you heard the term "PDUFA"?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 109</p> <p>1 to Biopure with, I think, 200 questions that</p> <p>2 they needed to be answered where they had</p> <p>3 concerns.</p> <p>4 Q. Okay. Have you ever seen the complete</p> <p>5 response letter?</p> <p>6 A. No.</p> <p>7 Q. The document that you assert is a</p> <p>8 complete response letter?</p> <p>9 A. No, I have not.</p> <p>10 Q. Have you seen any written documents in</p> <p>11 the form of correspondence between Biopure and</p> <p>12 FDA?</p> <p>13 A. Between Biopure and FDA? I don't</p> <p>14 believe so.</p> <p>15 Q. Who is Stuart Gottlieb?</p> <p>16 A. He's one of the Plaintiffs.</p> <p>17 Q. Have you heard the term "clinical</p> <p>18 hold"?</p> <p>19 A. Yes.</p> <p>20 Q. What's a clinical hold?</p> <p>21 A. I believe it means that the company is</p> <p>22 no longer able to conduct any further clinical</p> <p>23 trials of the drug.</p> <p>24 Q. Okay. Does that term have any</p>

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<p>1 significance in this case? 2 A. Yes. 3 Q. And what's the significance? 4 A. I believe they were told, this is 5 after the fact I know this, I found this 6 allegedly out, they were told in July to put a 7 hold on further testing. 8 Q. Okay. Further testing of what? 9 A. Of Biopure -- of Hemopure. 10 Q. For any certain application? 11 A. Just for the clinical trials is what I 12 gather, and it was a result of the concerns they 13 had of -- from previous trials, that apparently 14 the orthopedic trials that they reviewed, they 15 had many concerns, so they put a hold on any 16 further clinical trials in the trauma arena. 17 Q. Okay. Who is the lead Plaintiff in 18 this case? 19 A. Erickson. 20 Q. Are you claiming that you were damaged 21 as a result of your, or harmed in any way as a 22 result of your purchase of Biopure stock on 23 August 12th? 24 A. Yes.</p>	<p>Page 110</p> <p>1 BY MR. SAVERY: 2 Q. You mentioned, Dr. Esposito, when you 3 testified earlier today that the USAA company 4 had a special program for officers who had 5 served in the Armed services, something along 6 those lines? 7 A. Yes. 8 Q. Do you have a military background? 9 A. Yes. 10 Q. When did you serve in the military? 11 A. Six years of Reserves, I was a major, 12 retired major, United States Army Reserves. 13 Q. When did you serve? 14 A. '60 -- oh my God, let's say, '68 to 15 '74. 16 Q. Were you on active duty for any 17 period? 18 A. Two weeks a year. 19 Q. Any overseas service? 20 A. No. 21 Q. Why don't you just walk us through 22 very quickly what your employment history has 23 been since you obtained your dentist's license. 24 We sort of jumped from you finishing your</p>
<p>1 Q. How were you harmed or damaged? 2 A. Well, I feel that it was -- I bought 3 the stock at an inflated price because of 4 nondisclosure of the company, not to me 5 personally because I have no knowledge of the 6 stuff, but because of their actions, they did 7 not tell the market, and consequently the market 8 value was high. 9 Q. What did they not tell the market? 10 A. That they had a hold on the clinical 11 trials as early as April, and then in July they 12 had that very disastrous letter concerning the 13 200 or so, I find out later, concerns that the 14 FDA had. These are very negative things that 15 I'm sure -- I'm assuming would have impacted on 16 the value of the stock. 17 Q. Just bear with me for a minute. 18 A. Sure. 19 MR. SAVERY: Actually we've been going 20 for a little over an hour now. 21 Off the record. 22 (Off the record discussion.) 23 (Whereupon, a luncheon recess was 24 taken from 1:16 p.m. to 1:54 p.m.)</p>	<p>Page 111</p> <p>1 medical school and becoming licensed to what 2 you're doing today. To the extent there's any 3 gap there that you didn't cover in your 4 testimony, if you could fill that. 5 A. No. From 1970, which was after my 6 training was complete, to the present it's the 7 exact same of private practice at 555 Larkfield 8 Road, teach at Stony Brook, DCNY business, and 9 chief of oral surgery at the Huntington 10 Hospital. That was sixteen years of that time. 11 But that's all ancillary, the main thing is the 12 private practice at 555 Larkfield Road, 36 13 years. 14 Q. In what city? 15 A. East Northport, Long Island. 16 Q. And the DCNY business, when did that 17 business start, start up? 18 A. About eight years ago. 19 Q. And you keep an address in Manhattan 20 as well for DCNY? 21 A. I just sublet a place for the 22 convenience of the people who I have to examine. 23 Q. What's the address there? 24 A. 30 Central Park South.</p>

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<p>1 Q. You mentioned you also teach at Stony 2 Brook? 3 A. Yes. 4 Q. For how long have you taught at Stony 5 Brook? 6 A. Twenty-one years. 7 Q. What do you teach? 8 A. Oral surgery. 9 Q. Are you an adjunct faculty member? 10 A. Clinical professor, right. 11 Q. Any other employment since 1970 apart 12 from what you've testified to? 13 A. I'm a consultant for the State of New 14 York for OPD, Office of Professional Discipline. 15 Q. Can you explain what that position is? 16 A. Well, when there's a complaint against 17 a doctor, they need consultants like us to 18 review the claims and the complaints and testify 19 if necessary. 20 Q. Have you ever testified in that 21 context? 22 A. Yes. 23 Q. How many times? 24 A. Twice. But I made -- I got many</p>	<p>Page 114</p> <p>1 Biopure was not a profitable company? 2 MR. LONGMAN: Objection. 3 A. Yes, I think. 4 MR. LONGMAN: No foundation. 5 BY MR. SAVERY: 6 Q. Were you aware as to whether it had 7 operated at a profit? 8 A. I believe I was, I was aware of that 9 after Mr. Harris looked into the company, and we 10 discussed it, and he said yes, it was the level 11 that they were at then, but again it's all 12 pending the hopefully successful FDA approval. 13 Q. Okay. So Mr. Harris had informed you 14 at least by August 12th that Biopure was not at 15 that point in time operating in a profit? 16 A. Right. 17 Q. And were you aware at that point in 18 time that the Hemopure product had not yet 19 received FDA approval? 20 A. Correct. 21 Q. Did you know at that point in time 22 whether Biopure was generating any sales 23 revenues? 24 A. I did not know.</p>
<p>1 reports. You can fill out the reports and it 2 doesn't really have to go to testimony. 3 Q. And is that testimony before an 4 administrative panel? 5 A. Yes. 6 Q. Okay. And you testified in each of 7 those two instances as an expert? 8 A. Yes, as a consultant for the state. 9 Q. What is your Social Security Number? 10 A. [REDACTED] 11 MR. LONGMAN: Object. 12 I want to mark that as confidential. 13 I don't know why you need to know that. 14 BY MR. SAVERY: 15 Q. Okay. And just to clarify one of my 16 earlier questions regarding some of the terms 17 that we reviewed, BLA was one of the terms that 18 I'd asked you about. 19 And before you came here today, did 20 you have an understanding of what the term BLA 21 referred to? 22 A. No. 23 Q. As of your first purchase of Biopure 24 stock in August of 2003, were you aware that</p>	<p>Page 115</p> <p>1 Q. I think you -- sorry. 2 A. I seem to recall he said something 3 about veterinary, I don't really remember 4 completely, but some vague memory of a 5 veterinary market for it. 6 Q. Okay. And was it your understanding 7 at that point, is it your recollection that 8 there was a veterinary product that was being 9 sold by Biopure at that point? 10 A. I believe so. 11 Q. Okay. But notwithstanding the 12 possibility that they were marketing a product 13 in the veterinary market, they were still 14 operating at a loss; that was your 15 understanding? 16 A. Correct. 17 Q. Okay. I think you may have testified 18 earlier, if so I apologize, you understood that 19 Biopure was a risky investment as of August 20 12th? 21 MR. LONGMAN: Objection. 22 That wasn't his testimony before. 23 A. Could I answer? 24 BY MR. SAVERY:</p>

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<p style="text-align: right;">Page 118</p> <p>1 Q. Yes. Sure. 2 A. You asked me if it was more risky than 3 Merck, and I said yes. 4 Q. Okay. 5 A. That was the context of what I 6 thought. 7 Q. Did you consider it to be one of your 8 more risky investments? 9 A. No, I've had some -- although just 10 playing with stock. No, I've had more that I 11 thought were more risky, not many, because I 12 don't invest that much. 13 Q. Can you give me an example of a stock 14 that you've invested in that was more risky? 15 A. Stocks that are very cheap, penny 16 stocks. One, the most recent one is named 17 Schram, I believe, and a friend said this 18 company has possibilities in the tech market, 19 and it was like, you know, \$.50 a share or 20 something like that, so that I consider just a 21 crap shoot, and I don't do that very frequently. 22 Q. Okay. Have there been other penny 23 stocks you've invested in? 24 A. Maybe one other, which I don't</p>	<p style="text-align: right;">Page 120</p> <p>1 Harris? 2 A. Yes. 3 Q. And how did that purchase come about? 4 A. Again just verbally, phone call, and 5 then mail a check, that kind of thing. 6 Q. Who first came up with the idea of an 7 additional -- 8 A. I did. 9 Q. -- position? 10 A. I thought I wanted to be in a position 11 of about around that figure, nine, 10,000, but I 12 decided to do a little bit conservatively first, 13 half first and then see what happened. And then 14 sure enough, in a week or so the stock went up, 15 so I thought well, gee, this would be warranted, 16 so I purchased more. 17 Q. Okay. 18 A. And that was as much as I wanted to 19 purchase. 20 Q. Okay. So when you first bought on 21 August 12th, you had in mind that you'd possibly 22 go up to the \$9,000 range?</p>
<p style="text-align: right;">Page 119</p> <p>1 remember. 2 Q. Okay. Apart from the penny stocks, 3 have there been any stocks that you consider to 4 be more risky than Biopure that you invested in? 5 A. I don't recall. 6 Q. Turning back to Exhibit 46 in front of 7 you, turn to the second page, there's a 8 reference there to a buy on August 21st. 9 Do you see that? 10 A. Yes. 11 Q. Did you, in fact, purchase 600 more 12 shares on August 21st? 13 A. Yes. 14 Q. And at that point the price was \$8.22? 15 A. Yes. 16 Q. So in the nine days since you had 17 purchased your first shares, the stock had risen 18 over a dollar, is that right? 19 A. Yes. 20 Q. You were aware, it's fair to say, that 21 there were fluctuations in the price of Biopure 22 stock? 23 A. Yes. 24 Q. Did you make this purchase through Mr.</p>	<p style="text-align: right;">Page 121</p> <p>1 A. Right. And apparently I must have 2 again, because if the other thing was correct, I 3 must have had prior experience of a buy and a 4 sell according to this thing here in early 5 August, so that might have been -- 6 MR. LONGMAN: Could I hear his 7 question again? 8 (Whereupon, the reporter read back the 9 pending question.) 10 A. The answer is yes. 11 BY MR. SAVERY: 12 Q. Okay. And you mentioned in your 13 answer, your prior answer to that, that's the 14 sale that's reflected in your certification, 15 right? 16 A. Yes. 17 Q. But again as you sit here, you have no 18 recollection of that sale, correct? 19 A. Right. 20 Q. And you have no recollection of 21 holding Biopure prior to August 12th? 22 A. Correct. 23 Q. And you can't say as you sit here if 24 you did hold prior to August 12th when you</p>

<p>1 bought?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Now, between your purchase of</p> <p>4 Biopure stock on August 12th and your next</p> <p>5 purchase on August 21st, did you receive any</p> <p>6 information from any sources regarding Biopure?</p> <p>7 A. Just when I -- we checked with Mr.</p> <p>8 Harris he said -- he quoted a price, that it had</p> <p>9 gone up, and that's when I decided to buy more.</p> <p>10 Q. Okay. So was that your first</p> <p>11 conversation with Mr. Harris regarding Biopure</p> <p>12 after you had bought on August 12th?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And was that conversation then</p> <p>15 on August 21st, is that when you would have</p> <p>16 spoken to him?</p> <p>17 A. Yes, probably.</p> <p>18 Q. Okay. So just to be clear, you didn't</p> <p>19 talk to Harris regarding Biopure between the</p> <p>20 12th and the 21st?</p> <p>21 A. I can't remember exactly, but I would</p> <p>22 guess yes, that is correct. Because that's when</p> <p>23 I bought it. So classically if we discuss it</p> <p>24 and I'm impressed by the results, I would order</p>	<p>Page 122</p> <p>1 on-line, the Internet, or Mr. Harris, and</p> <p>2 ultimately Mr. Harris, and that's when I decided</p> <p>3 to buy more.</p> <p>4 Q. When you spoke to Mr. Harris prior to</p> <p>5 your second purchase, what did he say to you</p> <p>6 regarding Biopure, if anything?</p> <p>7 MR. LONGMAN: Asked and answered.</p> <p>8 Answer it again.</p> <p>9 A. Just that it went up.</p> <p>10 BY MR. SAVERY:</p> <p>11 Q. Anything else?</p> <p>12 A. No, he didn't have any further</p> <p>13 information other than the prior information</p> <p>14 from before I bought the first on the 12th. He</p> <p>15 didn't add anything.</p> <p>16 Q. Okay. Fine.</p> <p>17 And did you comment to him regarding</p> <p>18 Biopure during your conversation, apart from the</p> <p>19 fact that you wanted to buy more?</p> <p>20 A. Just that it seemed like it was on the</p> <p>21 rise, so I thought that, well, yes, maybe this</p> <p>22 is a good stock, because again we were still</p> <p>23 quite impressed by the potential.</p> <p>24 Q. Okay. And again to be clear, before</p>
<p>1 it at that time.</p> <p>2 Q. So just to be clear, there's no</p> <p>3 recollection of any interim report coming in?</p> <p>4 A. Right.</p> <p>5 Q. And did you check the market price of</p> <p>6 Biopure between the 12th and when you next spoke</p> <p>7 to Harris regarding Biopure?</p> <p>8 A. Yes, that's why -- yes. The fact that</p> <p>9 it went up from seven to eight?</p> <p>10 Q. Yes, sorry.</p> <p>11 Just so it's clear, did you yourself</p> <p>12 go and try to look up the market price or did</p> <p>13 you -- was it not until you spoke to Harris?</p> <p>14 A. That I could do --</p> <p>15 MR. LONGMAN: Mr. Harris.</p> <p>16 A. Mr. Harris, yes, I could look it up on</p> <p>17 the computer and find that it was going up, and</p> <p>18 that's probably what prompted my call.</p> <p>19 BY MR. SAVERY:</p> <p>20 Q. Okay. So as you sit here, do you</p> <p>21 recall that you monitored the price of Biopure</p> <p>22 stock after you first bought it on the 12th?</p> <p>23 A. I can't exactly recall. It was either</p> <p>24 one way or the other I found out, either from</p>	<p>Page 123</p> <p>1 you bought your second holding in Biopure from</p> <p>2 the time you bought your first, that period of</p> <p>3 time now, you didn't go out and do any of your</p> <p>4 own research?</p> <p>5 A. No.</p> <p>6 MR. LONGMAN: Objection. It is clear</p> <p>7 already.</p> <p>8 MR. SAVERY: If you have an objection,</p> <p>9 state it. I'm not here to answer your</p> <p>10 questions.</p> <p>11 MR. LONGMAN: Then stop repeating the</p> <p>12 same questions. We want to get out of here, we</p> <p>13 don't want to stay here for repetitive</p> <p>14 questions.</p> <p>15 MR. SAVERY: Fine.</p> <p>16 Did I get an answer to that question?</p> <p>17 (Whereupon, the reporter read back the</p> <p>18 above answer.)</p> <p>19 BY MR. SAVERY:</p> <p>20 Q. As of August 21st, was your</p> <p>21 understanding, regarding the status of Biopure's</p> <p>22 effort to obtain FDA approval, was your</p> <p>23 understanding the same as what the status was as</p> <p>24 of August 12th when you first bought?</p>

<p>1 A. Yes.</p> <p>2 Q. Okay. Turning to the first page of</p> <p>3 this document -- strike that.</p> <p>4 Before I jump to it, to the extent</p> <p>5 there had been a prior purchase of Biopure,</p> <p>6 would it have been done through Harris?</p> <p>7 A. Yes.</p> <p>8 MR. LONGMAN: Objection.</p> <p>9 There's no testimony that there was a</p> <p>10 prior purchase. You said "to the extent," so</p> <p>11 that's not an accurate question.</p> <p>12 MR. SAVERY: Okay. So are you making</p> <p>13 an objection, is that what you're doing?</p> <p>14 MR. LONGMAN: Yes.</p> <p>15 MR. SAVERY: Okay.</p> <p>16 BY MR. SAVERY:</p> <p>17 Q. Page one of Exhibit 46, it refers to,</p> <p>18 down at the bottom here, a sale of Biopure</p> <p>19 stock?</p> <p>20 MR. TUCCILLO: Where are you?</p> <p>21 MR. SAVERY: I'm on Exhibit 46, first</p> <p>22 page.</p> <p>23 A. The bottom line, I see the numbers. I</p> <p>24 don't see where it says sale.</p>	<p>Page 126</p> <p>1 were having really significant problems, so</p> <p>2 that's probably why we sold.</p> <p>3 Q. Okay. And did Mr. Harris recommend to</p> <p>4 you that you sell at that point?</p> <p>5 A. We must have had a conversation, and</p> <p>6 we must have agreed eventually.</p> <p>7 Q. But you don't recall one way or the</p> <p>8 other who brought it up?</p> <p>9 A. No.</p> <p>10 Q. Did you sell at that point to take a</p> <p>11 tax benefit from the loss?</p> <p>12 A. I don't recall. If we had a gain,</p> <p>13 that would have been applied to the gain,</p> <p>14 correct? I don't remember if I had a gain or</p> <p>15 not.</p> <p>16 MR. LONGMAN: You're referring to</p> <p>17 other securities, a gain?</p> <p>18 THE WITNESS: Mm-hmm.</p> <p>19 BY MR. SAVERY:</p> <p>20 Q. Now, are you claiming in this case</p> <p>21 that you were harmed as a result of that sale of</p> <p>22 Biopure stock?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Can you explain what your</p>
<p>1 BY MR. SAVERY:</p> <p>2 Q. Okay. Well, why don't we take it</p> <p>3 another way.</p> <p>4 Did you sell your position in Biopure</p> <p>5 at any point?</p> <p>6 A. Yes, I think I must have sold, I think</p> <p>7 that's what happened here, in January of '05.</p> <p>8 Q. Sorry. I didn't mean to interrupt</p> <p>9 you.</p> <p>10 A. That's okay.</p> <p>11 It was 1,200 shares, yes, at \$.54. I</p> <p>12 guess that's what happened then.</p> <p>13 Q. Okay. Why did you sell in January of</p> <p>14 '05?</p> <p>15 A. I don't recall. Again it must -- we</p> <p>16 must have talked to Mr. Harris about it. And</p> <p>17 this was in January of '05, this was after we</p> <p>18 learned about the problems that the company was</p> <p>19 having, the FDA problems, and I think there was</p> <p>20 a FTC problem, too, as well, I don't remember,</p> <p>21 but it was something that was very, very</p> <p>22 detrimental we thought. December of -- December</p> <p>23 was when that came out.</p> <p>24 It was after word came out that they</p>	<p>Page 127</p> <p>1 position is on that point?</p> <p>2 A. Well, the position is the same, it is</p> <p>3 that I feel that the prices that were seen in</p> <p>4 the market when I bought the \$9,000 worth of</p> <p>5 stock were as a result of the company's not</p> <p>6 disclosing very significant information that was</p> <p>7 very detrimental to the company and would have</p> <p>8 lowered the value of the stock. That's how I</p> <p>9 feel that we were harmed. We bought a stock at</p> <p>10 an inflated price because of the lack of</p> <p>11 information.</p> <p>12 Q. Okay. And was all of the loss that</p> <p>13 you suffered from the time you purchased to the</p> <p>14 time you sold this price -- sorry. Withdraw</p> <p>15 that question.</p> <p>16 Is it your position in this case that</p> <p>17 all of the loss that you suffered from the time</p> <p>18 you purchased your shares in Biopure to the time</p> <p>19 you sold them recoverable as damages in this</p> <p>20 case?</p> <p>21 MR. LONGMAN: Objection.</p> <p>22 Can you read that back.</p> <p>23 (Whereupon, the reporter read back the</p> <p>24 pending question.)</p>

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<p>1 MR. LONGMAN: I object to the form of 2 that question. 3 Do you understand the question? 4 A. I think I do. Do I feel that I 5 deserve to get reimbursed for this? 6 BY MR. SAVERY: 7 Q. Yes. 8 A. I think yes, I do, because if it were 9 common knowledge, I mean if they had disclosed 10 this, that stock would have gone down, it would 11 have tanked way before I bought it. 12 Q. But do you feel you're entitled to be 13 compensated for the difference between the \$7.00 14 and the \$8.22 on the one hand, your purchase 15 prices, and the \$.54 on the other hand, your 16 sale price? 17 A. Yes. 18 Q. The entirety of it? 19 A. Yes, because what if -- if that were 20 known and the stock went down to \$.54 in April 21 or July when they got all this bad news, I 22 wouldn't have bought it for eight bucks. 23 Q. And do you think that that's the 24 actual value of the stock, \$.54 as of April or</p>	<p>Page 130</p> <p>1 MR. LONGMAN: He said conference 2 calls. 3 MR. SAVERY: Investor calls. 4 A. No. 5 BY MR. SAVERY: 6 Q. When did you first consider bringing a 7 lawsuit against Biopure? 8 A. When I spoke to Mr. Harris, and that 9 was in -- when did the stock start to tank? It 10 was after December of '03, and he said there was 11 a problem with it, and he had found out, or 12 that's when they disclosed the fact there was a 13 problem with the FDA and the holds that they put 14 on the company. And I asked him if there's any 15 recourse, because it seemed like it was not fair 16 that this was not disclosed, and he -- that's 17 when he referred me to Mr. Longman. 18 Q. Sorry, that was in late 2003? 19 A. Yes. 20 Q. Okay. Do you recall what the stock 21 price of Biopure was at around that time? 22 A. No. It might have been later than 23 '03, I don't quite know the timing of that. It 24 might have been a little later. I can't be</p>
<p>1 July? 2 MR. LONGMAN: Objection. Not an 3 expert. 4 A. Oh, I have no idea. 5 BY MR. SAVERY: 6 Q. After you sold your Biopure shares in 7 January of '05, did you purchase any additional 8 positions in Biopure? 9 A. I don't believe so, no. 10 Q. And to be clear, you don't own any 11 Biopure stock today, right? 12 A. Correct. 13 Q. Do you know whether your daughter or 14 son-in-law ever purchased Biopure? 15 A. I don't believe they did. I'm not 16 sure. They were in training at the time, so I 17 don't think they had the money. 18 Q. Any other family members? 19 A. No. 20 Q. Did you ever participate in any 21 conference calls regarding Biopure stock? 22 A. No. 23 MR. TUCCILLO: You mean aside from his 24 calls with Harris, right?</p>	<p>Page 131</p> <p>1 sure. But I remember what happened, and I 2 remember saying "oh, my gosh, the darn thing is 3 going down" and I was so disappointed, and 4 that's when I discussed it with Mr. Harris. 5 Q. Okay. And so you raised the issue 6 with Mr. Harris? 7 A. Yes. 8 Q. Did Mr. Harris talk to you prior to 9 that conversation about any concerns relating to 10 Biopure? 11 A. I don't remember. 12 Q. Do you remember having any discussions 13 with anyone regarding Biopure before that 14 conversation with Mr. Harris after your last 15 purchase on August 21st? 16 A. No, I don't. 17 Q. And had you done any independent 18 research, read any articles, anything along 19 those lines regarding Biopure during that same 20 period, that is August 21st until the time of 21 this conversation with Mr. Harris? 22 A. No. 23 Q. What did Mr. Harris tell you about Mr. 24 Longman?</p>

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<p>1 A. That his firm specializes in class 2 action suits to recover some of your losses. 3 Q. Did Harris, Mr. Harris mention whether 4 any suits had been filed relative to Biopure to 5 that point? 6 A. He did not, no. 7 Q. Did he tell you whether he personally 8 knew Mr. Longman? 9 A. Yes, he did. 10 Q. And what did he say? 11 A. He said he did know him. 12 Q. Did he tell you how he knew him? 13 A. Customer, I think, or business 14 associate or customer. 15 Q. What else did he tell you, if 16 anything, regarding Mr. Longman? 17 A. That's it. 18 Q. What else did Mr. Harris tell you 19 during that conversation regarding Biopure, if 20 anything? 21 A. He had no -- he just -- we had spoken 22 about the problems that it had, and that was 23 essentially the end of the conversation. 24 Q. Okay. And just so I'm clear, when you</p>	<p>Page 134</p> <p>1 because I didn't know how serious the problems 2 were. And then apparently I decided in January 3 that they were beyond hope, and that's when we 4 sold whatever we had left. 5 Q. Okay. That's January a year later, 6 though? 7 A. Yes. 8 Q. Did you discuss Biopure prior to 9 initiating a lawsuit here with anyone else other 10 than Mr. Harris and Mr. Longman? 11 A. No. 12 MR. LONGMAN: Objection. 13 There are numerous discussions he had 14 regarding Biopure before he initiated the 15 lawsuit. 16 THE WITNESS: He said other than you 17 and Harris. 18 BY MR. SAVERY: 19 Q. Anything else? 20 MR. LONGMAN: No. I just want to 21 point out that the question was overbroad. 22 MR. SAVERY: Okay. The word objection 23 would suffice, I think, rather than your 24 testimony.</p>
<p>1 say "we had spoken about the problems," is that 2 during that same conversation, or along the line 3 did you have other conversations with him? 4 A. It was probably the same conversation, 5 although he may -- well, I mean it could have 6 been one or several phone calls concerning the 7 problems with the company, and then the final 8 conversation concerned Mr. Longman. 9 Q. Okay. Do you recall anything else 10 that Mr. Harris told you during any of those 11 conversations other than what you've already 12 testified to? 13 A. No, I don't know. 14 Q. Okay. Do you recall anything else 15 that you said to Mr. Harris during any of those 16 conversations other than what you've testified 17 to? 18 A. No. 19 Q. After you spoke to Mr. Harris, what 20 did you do next relative to Biopure? 21 A. I contacted Mr. Longman. 22 Q. Did you consider selling your Biopure 23 position at that point? 24 A. I really didn't know what to do,</p>	<p>Page 135</p> <p>1 MR. LONGMAN: It would, but apparently 2 you keep making the same -- 3 MR. SAVERY: I don't want any more 4 testimony from you, okay, Mr. Longman? 5 MR. LONGMAN: Okay. I don't want any 6 more objectionable questions. 7 MR. SAVERY: You're going to get 8 objectionable questions, and it's your role to 9 object to them, period, all right? It's not 10 your role to testify. 11 (Whereupon, Exhibit 48 was marked for 12 identification.) 13 MR. LONGMAN: I think this is already 14 an exhibit, isn't it? 15 MR. TUCCILLO: No. 16 BY MR. SAVERY: 17 Q. I'm showing you now, sir, what's been 18 marked Exhibit 48, and you can take as much time 19 as you need to look at it. 20 My first question is, whenever you're 21 ready, have you seen it before? 22 (Witness reviewing document.) 23 A. Yes, I believe this is the first of 24 the documents that I received.</p>

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<p style="text-align: right;">Page 138</p> <p>1 BY MR. SAVERY: 2 Q. Can you be more specific? 3 A. Concerning the suit that was from Mr. 4 Longman. 5 Q. Okay. And when did you first see this 6 document? 7 MR. LONGMAN: I just want to raise an 8 objection. There's some additional markings on 9 this document which I haven't seen before. 10 MR. SAVERY: Okay. That's noted. 11 BY MR. SAVERY: 12 Q. Apart from some markings on this first 13 page here, this document at least perhaps in 14 another form you have seen before, is that 15 right? 16 A. Yes. 17 Q. When did you first see this document 18 or a similar document? 19 A. It was approximately two years ago, 20 this whole thing started, it was -- yes, about 21 two years ago, I don't remember exactly. 22 Q. You understand this is a complaint 23 that was filed in court? 24 A. Yes.</p>	<p>1 the other whether you saw this class action 2 complaint, not necessarily this copy of it, but 3 this class action complaint before a complaint 4 was filed in the Esposito versus Biopure action? 5 A. I can't say. I don't remember. 6 Q. When you first received a copy of this 7 document, did you read it? 8 A. Yes, scanned it, right. 9 Q. Okay. 10 A. That was again a while ago. 11 Q. All right. Did you scan it or did you 12 read it? 13 A. Well, I read it. 14 Q. Did you read it word for word, or no? 15 A. I probably did at one -- when I 16 received it. 17 Q. Okay. You say you probably did. Are 18 you able to say with certainty one way or the 19 other? 20 A. No. 21 Q. Okay. If you turn to page 25, it's 22 the very last page, sorry, I believe it is, do 23 you see the date there? 24 A. January 6th, '04.</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. Okay. And it was filed in a case 2 titled John G. Esposito, Jr. versus Biopure 3 Corporation and other Defendants? 4 A. Yes. 5 Q. Did you see this document in draft 6 form before it was finalized? 7 A. I don't believe so. 8 Q. So is it your understanding the first 9 time you saw a copy of this document was after 10 it was filed with the Court? 11 MR. LONGMAN: Objection. That's not 12 what he said. Objection. 13 MR. SAVERY: Your objection is noted. 14 Okay. 15 BY MR. SAVERY: 16 Q. I want an answer to the question, 17 please. 18 A. What was the question again? 19 (Whereupon, the reporter read back the 20 pending question.) 21 A. If this is a document that is produced 22 after the filing, I presume that's correct. 23 BY MR. SAVERY: 24 Q. Okay. Are you able to say one way or</p>	<p>1 Q. Prior to January 6th, '04, had you met 2 Mr. Longman? 3 A. Met him? No. 4 Q. Okay. You'd spoken to him on the 5 phone? 6 A. Yes. 7 Q. Do you know how many times? 8 A. Not many. Once or twice. 9 Q. Okay. Had you met any other lawyers 10 from his firm? 11 A. No. 12 Q. Had you spoken to any other lawyers 13 from his firm on the phone? 14 A. No. 15 Q. Had you met anyone from Gilman & 16 Pastor? 17 A. No. 18 Q. Had you spoken to anyone from Gilman & 19 Pastor? 20 A. No. 21 Q. What's the class period that's alleged 22 in the action that you instituted, this first 23 action? 24 A. That was -- the class period was April</p>

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<p style="text-align: right;">Page 142</p> <p>1 9th to December 24th.</p> <p>2 Q. Okay. And who was identified in this</p> <p>3 initial action as the class representative?</p> <p>4 MR. LONGMAN: Objection. Objection.</p> <p>5 A. I was one of them.</p> <p>6 BY MR. SAVERY:</p> <p>7 Q. Okay. Were there more than one?</p> <p>8 A. I really -- I assume there was. I</p> <p>9 don't really know.</p> <p>10 MR. LONGMAN: I object to that</p> <p>11 question. It's an erroneous question.</p> <p>12 BY MR. SAVERY:</p> <p>13 Q. I'm showing you now what was marked</p> <p>14 yesterday as Exhibit 24 (handing). Take as much</p> <p>15 time as you need to look at it.</p> <p>16 The first question is; have you seen</p> <p>17 it before?</p> <p>18 A. Yes.</p> <p>19 Q. What is it?</p> <p>20 A. That's the second complaint document</p> <p>21 that I had received, the consolidated amended</p> <p>22 complaint. And I believe the only difference --</p> <p>23 it was explained to me, that's why this other</p> <p>24 one was also explained before I even read it by</p>	<p style="text-align: right;">Page 144</p> <p>1 can tell you what my sub-class is, is the fact</p> <p>2 that I also contemporaneously bought when one of</p> <p>3 the principals sold. So I'm not only in the big</p> <p>4 class of people who lost money, but I'm also in</p> <p>5 the sub-class of those who again</p> <p>6 contemporaneously bought while somebody else</p> <p>7 sold in the company.</p> <p>8 Q. Okay. So is it your position in this</p> <p>9 litigation that you bought on the same day that</p> <p>10 someone from the company sold?</p> <p>11 A. Yes.</p> <p>12 Q. Who was it that sold on that day?</p> <p>13 A. Rausch. Is that how you pronounce it?</p> <p>14 Q. Rausch?</p> <p>15 A. Rausch, yes.</p> <p>16 Q. Was that on one of the two days that</p> <p>17 we'd identified when you bought?</p> <p>18 A. I believe so, yes.</p> <p>19 Q. But not on the other?</p> <p>20 A. I'm not sure. I'd have to look at the</p> <p>21 documents.</p> <p>22 Q. Can you tell me why that is --</p> <p>23 withdraw that.</p> <p>24 Is that an independent basis for a</p>
<p style="text-align: right;">Page 143</p> <p>1 Mr. Longman, so I knew the gist of it, and I</p> <p>2 believe the gist of this is they changed some</p> <p>3 dates.</p> <p>4 Q. Did you see a copy of this document</p> <p>5 before it was filed with the Court?</p> <p>6 A. I can't -- I don't really know --</p> <p>7 Q. Okay.</p> <p>8 A. -- the timing of filing and all.</p> <p>9 Q. Do you know why this consolidated</p> <p>10 amended complaint was prepared?</p> <p>11 A. No.</p> <p>12 Q. Do you know why the name of the case</p> <p>13 changed from Esposito versus Biopure to In Re</p> <p>14 Biopure Securities Litigation?</p> <p>15 A. No. I assume that it was because they</p> <p>16 had identified more Plaintiffs.</p> <p>17 Q. Who was the lead Plaintiff in this</p> <p>18 complaint?</p> <p>19 A. Ron Erickson.</p> <p>20 Q. Did you apply to be appointed lead</p> <p>21 Plaintiff?</p> <p>22 A. No.</p> <p>23 Q. What is a sub-class?</p> <p>24 A. A sub-class, well, in regard to this I</p>	<p style="text-align: right;">Page 145</p> <p>1 claim in this case?</p> <p>2 MR. LONGMAN: Objection. Calls for a</p> <p>3 legal conclusion.</p> <p>4 A. I have no idea.</p> <p>5 BY MR. SAVERY:</p> <p>6 Q. Okay. Why is there a sub-class?</p> <p>7 MR. LONGMAN: Objection. Calls for a</p> <p>8 legal conclusion.</p> <p>9 A. I really don't know. I'm not familiar</p> <p>10 with it. It seems to me that two things were</p> <p>11 wrong then; one, the principals did not</p> <p>12 disclose, and two, they sold while other people</p> <p>13 were in the midst of purchasing, so it's like a</p> <p>14 double kind of whammy, if you will.</p> <p>15 BY MR. SAVERY:</p> <p>16 Q. Okay. And part two in that analysis</p> <p>17 is the focus of the sub-class, is that correct?</p> <p>18 A. I presume, yes. I don't know if</p> <p>19 that's the legal, obviously I don't know that.</p> <p>20 Q. Have you heard of the term "motion to</p> <p>21 dismiss"?</p> <p>22 A. Yes.</p> <p>23 Q. Was a motion to dismiss filed relative</p> <p>24 to Exhibit 24?</p>

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<p style="text-align: right;">Page 146</p> <p>1 A. I have no idea. 2 Q. Are you aware whether a motion to 3 dismiss was filed in this case? 4 A. No. 5 Q. Showing you now what's been marked 6 Exhibit 25 (handing). Again take as much time 7 as you need. 8 My first question is; have you seen 9 that document before? 10 A. Yes, that's the third and final one 11 that I've seen -- 12 Q. Okay. And this is -- 13 A. -- of those. 14 Q. I didn't mean to interrupt. 15 A. Of these, the only other document was 16 the answers to those questions. 17 Q. And this document is titled "second 18 consolidated amended complaint"?</p> <p>19 A. Yes. 20 Q. When did you first see this document? 21 A. I can't -- I'm not sure. I know I saw 22 it recently, when I asked to get the documents 23 again so I could just look at them, that was 24 recent, that was about three weeks ago when Mr.</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. Okay. 2 A. Obviously this one was done more 3 recently. This is the last one. 4 Q. Right. 5 What's your best recollection as to 6 when you first saw this document? 7 A. Three weeks ago. 8 Q. Okay. 9 MR. LONGMAN: As to when you first saw 10 it, was that the question? 11 MR. SAVERY: That was the question. 12 BY MR. SAVERY: 13 Q. Why was this version of the complaint 14 prepared? 15 A. Again, it had something to do, I 16 believe, with some dates. I don't really 17 remember. It was again legal matters that get a 18 little bit confused when you have all these 19 documents, so I don't really remember. I just 20 remember the gist. 21 Q. Okay. And am I correct that you are a 22 representative of the sub-class? 23 A. Yes. 24 Q. Are there any other representatives of</p>
<p style="text-align: right;">Page 147</p> <p>1 Longman sent all of them to me. 2 Before that, I don't remember if I got 3 all three at once, the two years ago or whenever 4 this all started, or I don't know if there was 5 any time lapse between -- obviously this was the 6 last one that was drawn up, so it must have been 7 a time lapse between first and second and the 8 third. I can't tell which or what. 9 Q. Okay. If you look at the date on the 10 top of Exhibit 25, you see a reference there 11 "filed, March 28th, 2006"?</p> <p>12 A. Okay. This must have been a much more 13 recent one. That's what I'm saying. 14 Q. Now, do you recall getting, prior to 15 the last month or so, whenever it was that you 16 asked Mr. Longman to send you some documents, do 17 you recall receiving any versions of a 18 complaint, say in the previous three months? 19 A. Of this one? 20 Q. Yes. 21 A. I recall all three of them, the 22 recent, when he mailed them recently. Before 23 that I can't tell you. I know I had something, 24 but I can't say exactly what, the two years ago.</p>	<p style="text-align: right;">Page 149</p> <p>1 the sub-class? 2 A. I don't know if these other folks are 3 representatives of the sub-class. I know that 4 they're representatives of the class, Erickson 5 being the lead Plaintiff. I don't know about 6 Gottlieb and Bittman. I think they may have 7 been. I don't know -- 8 Q. Okay. 9 A. -- who's who. 10 Q. Are you a representative of the class 11 as well, or merely with the sub-class? 12 A. I believe the sub-class, but possibly 13 the class as well. I'm not sure about that. 14 That's again a legal thing. 15 MR. TUCCILLO: Just one second. 16 (Pause.) 17 MR. LONGMAN: I just wanted to say 18 something for the record in-between. 19 MR. SAVERY: Okay. I don't want 20 anything on the record. If you have an 21 objection, you can put it on. 22 MR. TUCCILLO: It's for your benefit. 23 MR. LONGMAN: It's for your benefit, 24 and I have the right to put something on the</p>

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<p>1 record.</p> <p>2 MR. SAVERY: Okay.</p> <p>3 MR. LONGMAN: It's possible that Dr.</p> <p>4 Esposito will also be -- is also a proposed</p> <p>5 representative of the class as well as the</p> <p>6 sub-class. We may amend our motion.</p> <p>7 MR. TUCCILLO: Just so you know.</p> <p>8 MR. LONGMAN: Just so you're aware.</p> <p>9 MR. TUCCILLO: So you can ask</p> <p>10 questions today if you want.</p> <p>11 MR. SAVERY: Well, he apparently</p> <p>12 doesn't even know this, and he hasn't been</p> <p>13 proposed as a class representative, he's been</p> <p>14 identified merely as a representative of a</p> <p>15 sub-class. So when and if you decide to amend</p> <p>16 your pleadings to include him as a class</p> <p>17 representative, we'll have to deal with it at</p> <p>18 that point. But at this point in time, you</p> <p>19 know, he's not.</p> <p>20 MR. TUCCILLO: Just for the record,</p> <p>21 we're putting you on notice that as of today our</p> <p>22 position is that he may be, and if you want to</p> <p>23 ask any questions appropriate to his being a</p> <p>24 class representative, we're not going to raise</p>	<p>Page 150</p> <p>1 objections to the entire exercise of doing so,</p> <p>2 we're reserving all rights to recall him at that</p> <p>3 point.</p> <p>4 MR. TUCCILLO: Understood.</p> <p>5 BY MR. SAVERY:</p> <p>6 Q. Dr. Esposito, did you have any role in</p> <p>7 deciding what claims were to be made in any</p> <p>8 version of the complaint that you've seen?</p> <p>9 A. No.</p> <p>10 Q. Okay. Did you have any role in</p> <p>11 deciding what individuals were to be named as</p> <p>12 Defendants in any version of the complaint</p> <p>13 you've seen?</p> <p>14 MR. LONGMAN: I'm going to object.</p> <p>15 It's vague.</p> <p>16 Go ahead.</p> <p>17 A. No.</p> <p>18 BY MR. SAVERY:</p> <p>19 Q. Are you aware that there is a separate</p> <p>20 claim in the complaint for insider trading?</p> <p>21 A. No.</p> <p>22 Q. Do you know what insider trading is?</p> <p>23 MR. LONGMAN: Objection. Insider</p> <p>24 trading --</p>
<p>Page 151</p> <p>1 objections unmasked you doing so, and we'll</p> <p>2 handle it as if you were asking questions about</p> <p>3 the sub-class, that's fine. You can feel free</p> <p>4 to pursue that today.</p> <p>5 MR. SAVERY: Okay. On the other hand,</p> <p>6 I reserve the right.</p> <p>7 MR. TUCCILLO: We would not agree to</p> <p>8 produce him again simply on the basis that he is</p> <p>9 a class representative if we amend it in the</p> <p>10 near future when we're telling you today we may</p> <p>11 very well do so.</p> <p>12 MR. SAVERY: I'm going to object to</p> <p>13 this.</p> <p>14 MR. TUCCILLO: That's fine.</p> <p>15 MR. SAVERY: Because it's clearly</p> <p>16 improper. He is here as a representative of the</p> <p>17 sub-class, you presented him in the complaint,</p> <p>18 in every version of the complaint and in your</p> <p>19 motion papers as a representative of the</p> <p>20 sub-class. We've got an opposition due in fewer</p> <p>21 than 30 days, I think, or it might be exactly 30</p> <p>22 days. So to the extent you're going to amend</p> <p>23 your papers and propose him as a representative</p> <p>24 of the class, first of all putting aside any</p>	<p>Page 153</p> <p>1 MR. SAVERY: What's the objection?</p> <p>2 MR. TUCCILLO: It's a legal</p> <p>3 conclusion.</p> <p>4 MR. LONGMAN: You don't want me to</p> <p>5 talk?</p> <p>6 MR. SAVERY: A legal conclusion?</p> <p>7 MR. TUCCILLO: He's allowed to say</p> <p>8 objection. You can't get upset with that.</p> <p>9 MR. LONGMAN: You can't win.</p> <p>10 A. Does insider trading mean -- does that</p> <p>11 refer to the fact that they sold stock while we</p> <p>12 were buying, is that the whole deal?</p> <p>13 BY MR. SAVERY:</p> <p>14 Q. Respectfully, I can't answer</p> <p>15 questions. It's my question to you; are you</p> <p>16 aware that there's a separate count in the</p> <p>17 complaint for insider trading?</p> <p>18 A. Can I tell you what I think with an</p> <p>19 explanation? If that indeed means that they</p> <p>20 were selling while we were buying, yes, I was</p> <p>21 aware of that. I'm not quite sure if that was</p> <p>22 what that insider trading remark referred to.</p> <p>23 Q. Okay. Just so I have it clear, you do</p> <p>24 have an understanding that there is a claim in</p>

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<p style="text-align: right;">Page 154</p> <p>1 the complaint that addresses the fact that 2 Rausch and perhaps others at Biopure sold at the 3 same time you and other shareholders purchased? 4 A. Yes. That's the basis of the 5 sub-class. 6 Q. Okay. 7 A. As I understand it. 8 Q. Okay. And what are the damages that 9 you're seeking relative to that claim? 10 MR. LONGMAN: Objection. Calls for a 11 legal conclusion. 12 A. I feel that again, if one would know 13 not only if they disclose the bad stuff that was 14 happening with the FDA, I call it bad stuff, but 15 I also knew that the principals were beginning 16 to unload their stock, I think that that would 17 also impact on what we felt was the value of the 18 stock. 19 BY MR. SAVERY: 20 Q. Okay. Just in terms of the two 21 purchases that we've talked about today, are you 22 able to tell me in dollars how much you feel 23 you're entitled to as a result of this, I'll 24 call it insider trading, okay?</p>	<p style="text-align: right;">Page 156</p> <p>1 A. Yes. 2 Q. And just in terms of your own 3 purchases of Biopure stock, what do you feel is 4 the damage you've suffered as a result of that 5 conduct? 6 A. The same as I've said, the amount that 7 I lost per se. 8 MR. LONGMAN: Asked and answered. 9 A. From the seven, \$8.00 range down to -- 10 that was, you know, it's not a big, it's 11 whatever it was, 8,000, \$9,000. 12 BY MR. SAVERY: 13 Q. Down to the \$.54 when you sold? 14 A. Right. 15 Q. Okay. Did you discuss the possibility 16 of filing suit before you filed your first 17 complaint with any other shareholder of Biopure? 18 A. No. 19 Q. Since filing suit, have you spoken 20 with any other Biopure shareholder? 21 A. No. 22 Q. Apart from Mr. Longman, did you talk 23 to any other lawyers regarding a possible suit 24 against Biopure?</p>
<p style="text-align: right;">Page 155</p> <p>1 A. Okay. 2 MR. LONGMAN: Objection. 3 A. Admittedly arbitrarily I would think 4 from that value of the \$8.00 value down to the 5 final \$.50 value that I had to -- that I was 6 forced to accept or did accept. 7 BY MR. SAVERY: 8 Q. Okay. And apart from the allegations 9 concerning this trading by Rausch and others and 10 the purchases of Biopure stock by shareholders, 11 apart from that set of allegations, are you 12 aware that the complaint also alleges fraud in 13 the sale of securities? 14 A. Fraud in the sale? 15 MR. LONGMAN: Objection. 16 A. I don't -- 17 MR. LONGMAN: That's not true. 18 A. I don't know what that -- no. 19 BY MR. SAVERY: 20 Q. Have you ever heard of -- withdraw. 21 Are you aware that you're making 22 claims in this case concerning 23 misrepresentations or omissions in connection 24 with the purchase or sale of securities?</p>	<p style="text-align: right;">Page 157</p> <p>1 A. No, just today. 2 Q. Yes, going back in time, though. 3 A. No. 4 MR. LONGMAN: Pointing to Mr. 5 Tuccillo. 6 A. I'm sorry. 7 BY MR. SAVERY: 8 Q. How many times have you spoken with 9 Mr. Longman? 10 A. Total? 11 Q. Yes. 12 MR. LONGMAN: Objection. 13 A. Six. 14 BY MR. SAVERY: 15 Q. And two of those were today and last 16 Friday? 17 A. Yes. 18 Q. Prior to that, when did you last have 19 any contact with Mr. Longman? 20 A. Prior to these last recent two, 21 yesterday and today? About three or so months 22 ago when this all began in earnest. 23 Q. Prior to then, when had you last 24 spoken with Mr. Longman?</p>

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<p>1 A. When Harris referred me to him a 2 couple years before that. 3 Q. Why did you decide to bring your 4 claims in a class action? 5 A. I really felt that what they did was 6 not really right, to tell you the truth. I 7 really felt that it was kind of misleading -- 8 not misleading, it was really, by omission it 9 was really not playing fair. The fact that 10 those two significant events were withheld, and 11 the fact that they were selling while other 12 people were buying, I thought that was really 13 not fair for those principals to do. 14 Q. Are you familiar at all with the 15 requirements for bringing a suit as a class 16 action? 17 A. No. 18 MR. LONGMAN: Objection. 19 BY MR. SAVERY: 20 Q. Do you have an understanding as to 21 what it means to be a representative of a class 22 or a sub-class? 23 A. Yes. 24 Q. What does it mean?</p>	<p>Page 158</p> <p>1 MR. TUCCILLO: Can you read the last 2 question and answer? 3 (Whereupon, the reporter read back the 4 above question and answer.) 5 BY MR. SAVERY: 6 Q. Apart from any written agreement, do 7 you have any verbal agreement regarding your 8 engagement of Mr. Longman as your attorney? 9 A. My expenses. 10 Q. What is the agreement relative to your 11 expenses? 12 A. Travelling, travelling expenses to 13 get -- schlep from New York to here. 14 Q. I'm wondering what the agreement is 15 relative to those expenses. 16 A. That he would reimburse those 17 expenses. 18 Q. Okay. Have you paid any money to any 19 lawyers representing you in this case? 20 A. No. 21 Q. Have you agreed to pay any costs for 22 bringing this action? 23 A. Yes. But as I understand it, if 24 there's -- there's a contingency fee, of course,</p>
<p>1 A. My job is to oversee, although it's of 2 course as a layman, what happens legally, what 3 the lawyers are doing, and to let -- make sure 4 that the rest of the class knows what's 5 happening through them, and participate in any 6 like decisions, if there's an offer or something 7 of that sort. 8 Q. Okay. And are you willing to testify 9 at trial if the case goes to trial? 10 A. Yes. 11 Q. Do you have a fee agreement with Mr. 12 Longman's firm? 13 A. No. 14 Q. Do you have any written agreement at 15 all with Mr. Longman? 16 A. No. He just mentioned that -- 17 MR. LONGMAN: Objection. I'm going to 18 object to disclosing attorney/client 19 communications. 20 THE WITNESS: Okay. 21 MR. LONGMAN: I want you to be able to 22 answer the question as to whether there's an 23 agreement or not, but I don't want you to 24 disclose our communications.</p>	<p>Page 159</p> <p>1 that the lawyers get. If they lose I would be 2 responsible for my percentage of their fee, 3 which is going to be relatively small since I'm 4 a small shareholder. 5 Q. When you say you'd be responsible for 6 your percentage of the fees, is that the 7 attorney fees? 8 A. Yes. 9 MR. LONGMAN: Objection. 10 BY MR. SAVERY: 11 Q. What about expenses? 12 A. What expenses? 13 Q. To the extent there are any additional 14 expenses such as you flying up here. 15 A. Oh, oh, I don't know the exact nature 16 of the -- you know, those numbers. 17 Q. Do you know who's responsible for 18 paying those expenses? 19 A. The expenses of? 20 Q. For instance, flying up here, or any 21 travel the lawyers have to do. 22 A. My expenses now I was told would be 23 reimbursed by the -- because that becomes their 24 expenses. Now, if there's a -- if they lose the</p>

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<p style="text-align: right;">Page 162</p> <p>1 case, we all have to pay them, reimburse them. 2 My portion would be commensurate with the 3 percentage of stock that I have. 4 Q. Okay. So it's your understanding, 5 then, that all holders of Biopure stock who fall 6 within the class in this case would be 7 responsible for -- 8 A. Yes, if they're in the suit, yes. 9 Q. Sorry, so I can finish the question. 10 -- would be responsible for 11 compensating Mr. Longman's firm for his fees and 12 expenses? 13 MR. LONGMAN: Objection. 14 A. Yes. 15 BY MR. SAVERY: 16 Q. You mentioned the term "contingency 17 fee." 18 A. Right. 19 Q. What is a contingency fee? 20 A. It means that the attorney gets paid, 21 upon winning a case he gets paid a percentage of 22 what is won of the settlement or whatever. 23 Q. Okay. Do you have an understanding of 24 what the contingency fee percentage is for your</p>	<p style="text-align: right;">Page 164</p> <p>1 at yesterday's deposition, showing them to you 2 and just asking you one or two questions about 3 each. 4 Showing you now what's been marked 5 Exhibit 26 (handing). And with respect to any 6 of these, take as much time as you need to look 7 through them. 8 My first question concerning each is 9 going to be; have you seen this document before? 10 A. No. 11 Q. Okay. That's all for that one. 12 Next one, 27 (handing). 13 A. I haven't seen this one either. 14 Q. Okay. That's Exhibit 27? Yes, that's 15 Exhibit 27? 16 A. Yes. I'm sorry. 17 Q. I'm showing you now what's been marked 18 as 28 (handing). And for each of these what I'm 19 wondering is if you've seen that specific 20 document or one that's in a similar form. 21 A. Yes, I understand that it's either 22 this or something like it. 23 Q. Similar, it could have been in a 24 different form.</p>
<p style="text-align: right;">Page 163</p> <p>1 engagement of Mr. Longman? 2 A. My -- I may have assumed this, that 3 it's a third. So I really can't say. 4 Q. Has anyone promised you a certain 5 amount of money if the case settles? 6 A. Certain amount of money? No. 7 Q. Has anyone suggested to you that you 8 will recover more than any of the other class 9 members in this case on a percentage basis? 10 A. No, but that's a damn good idea. 11 Q. But it hasn't been suggested? 12 A. No. 13 Q. Okay. Just for the benefit of 14 counsel. 15 A. Do you want to change lawyers? 16 Q. I don't think you want to do that. 17 MR. LONGMAN: Do you want to take a 18 quick break? 19 MR. SAVERY: Sure. 20 (Whereupon, a recess was taken from 21 2:52 p.m. to 3:08 p.m.) 22 BY MR. SAVERY: 23 Q. Dr. Esposito, I'm going to be going 24 through a number of documents that were marked</p>	<p style="text-align: right;">Page 165</p> <p>1 A. The answer is no to this one as well. 2 Q. Okay. I show you the next document. 3 It's been marked Exhibit 29 (handing). Have you 4 seen this before today? 5 A. No. 6 Q. Okay. The next document, Exhibit 30 7 (handing). Have you seen that document before? 8 A. No. 9 Q. Okay. I'm showing you now what's been 10 marked Exhibit 31 (handing). Have you seen that 11 document before? 12 A. No. 13 Q. Showing you what's been marked Exhibit 14 32 (handing). Have you seen that document 15 before? 16 A. No. 17 Q. Showing you what's been marked Exhibit 18 33 (handing). Have you seen that document 19 before? 20 A. No. 21 Q. Showing you what's been marked Exhibit 22 34 (handing). Have you seen that document 23 before? 24 A. No.</p>

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<p style="text-align: right;">Page 166</p> <p>1 Q. I'm showing you what's been marked 2 Exhibit 35 (handing). Have you seen that 3 document before? 4 A. No. 5 Q. I'm showing you what's been marked 6 Exhibit 36 (handing). Have you seen that 7 document before? 8 A. No. 9 Q. I'm showing you what's been marked 10 Exhibit 37 (handing). Have you seen that 11 document before? 12 A. No. 13 Q. I'm showing you what's been marked 14 Exhibit 38 (handing). Have you seen that 15 document before? 16 A. No. 17 Q. I'm showing you what's been marked 18 Exhibit 39 (handing). Have you seen that 19 document before? 20 A. No. 21 Q. Showing you what's been marked Exhibit 22 40 (handing). Have you seen that document 23 before? 24 A. No.</p>	<p style="text-align: right;">Page 168</p> <p>1 does not intend to appear again for a class 2 certification deposition. As we stated before, 3 it's possible that he'll be put forward as a 4 representative of the class as well as the 5 sub-class, obviously you haven't written your 6 opposition about him in either capacity before 7 today's deposition, feel free to ask any 8 additional questions you want today relative to 9 his potential use as a class representative. If 10 we do amend the papers, it will be imminently, 11 but you're free to ask any and all questions you 12 want today about either capacity. We're not 13 going to produce him again for such questioning. 14 MR. SAVERY: Okay. Well, I object to 15 the concept that you may or may not be changing 16 your designation as to class representative and 17 therefore I have to go about questioning this 18 witness relative to a capacity that he may or 19 may not be serving in the future. 20 So we're reserving all rights to 21 re-open questioning to the extent that you 22 decide to refile a motion or to put him forward 23 as a representative of the class. 24 MR. LONGMAN: And we're also not</p>
<p style="text-align: right;">Page 167</p> <p>1 Q. Showing you what's been marked Exhibit 2 41 (handing). Have you seen that document 3 before? 4 A. No. 5 Q. Showing you Exhibit 42 (handing). 6 Have you seen that document before? 7 A. No. 8 Q. Showing you Exhibit 43 (handing). 9 Have you seen that document before? 10 A. No. 11 Q. Okay. 12 MR. SAVERY: At this point I'm going 13 to suspend my questioning. And to the extent 14 there is any further production of documents 15 relative to this case, we reserve the right to 16 continue questions after that further production 17 of documents, or in light of what we -- and 18 there have been letters back and forth from 19 counsel about what Defendants perceive to be a 20 deficiency in response to Defendants' discovery 21 requests, but with that I'll complete my 22 questioning for the time. 23 MR. TUCCILLO: Just for the record, 24 we're reserving all rights as well. The witness</p>	<p style="text-align: right;">Page 169</p> <p>1 producing him again if more documents -- our 2 position is that we've complied with your 3 document request. 4 MR. SAVERY: Okay. We're reserving 5 all rights. 6 BY MR. HUANG: 7 Q. With that said, Dr. Esposito, I have a 8 few questions. This is going to take less than 9 five minutes. 10 Is it fair to characterize your prior 11 testimony -- is it fair to say that your prior 12 testimony is that during the time at which you 13 and other class members were purchasing Biopure 14 securities there were others that were selling 15 them who you contend were principals of Biopure 16 Corporation? 17 A. Yes. 18 Q. And what is the basis of your 19 understanding that there were principals that 20 were selling Biopure securities? 21 MR. LONGMAN: Objection. 22 Go ahead. 23 A. It was revealed to me in the lawyer's 24 production of the complaints, and the dates, I</p>

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<p style="text-align: right;">Page 170</p> <p>1 believe by Mr. Rausch, were the same dates as I 2 bought. 3 Q. Were there any documents that you 4 reviewed that forms that basis, the basis of 5 your understanding, other than the complaint you 6 just mentioned? 7 A. No. 8 Q. Were there any people or individuals 9 you spoke to that formed the basis of your 10 conclusion? 11 A. Just my attorney. 12 Q. Do you contend that Mr. Moore was one 13 of the principals who sold stock during the 14 class period? 15 A. I only -- referable to my buy, just 16 Mr. Rausch. 17 Q. Okay. Just to clarify, prior to 18 having reviewed the complaint, you were not 19 aware of any of these allegations concerning the 20 sale of Biopure securities by principals of 21 Biopure while you were in the process of 22 purchasing them, is that correct? 23 MR. LONGMAN: Objection. 24 A. Correct.</p>	<p style="text-align: right;">Page 172</p> <p>1 A. Yes. 2 MR. LONGMAN: Objection. 3 BY MR. SAVERY: 4 Q. Is there any other officer of Biopure 5 who you contend wrongfully sold his stock at the 6 time of a purchase by any other member of the 7 sub-class? 8 A. That I can't answer. I can only 9 answer for my purchase. I didn't review all of 10 them. 11 Q. Okay. 12 A. I believe the contention was that that 13 was true, but I can't document that. 14 Q. Okay. So for purposes of the claims 15 of the sub-class, do their claims concern the 16 sales by more individuals than simply Mr. 17 Rausch? 18 A. I believe they do. 19 Q. Okay. And do their claims also 20 concern the sale of Biopure stock by Biopure 21 itself? 22 A. The company, yes, I believe. 23 Q. All right. And is it your position 24 that you purchased contemporaneously with the</p>
<p style="text-align: right;">Page 171</p> <p>1 MR. HUANG: I have nothing else. 2 MR. SAVERY: Unless you wanted to -- 3 do you have anything you wanted to add? 4 MR. LONGMAN: I have one or two 5 follow-up questions -- not follow-up. 6 MR. TUCCILLO: Was there anybody else? 7 MR. SAVERY: I wanted to follow up on 8 that, since you're going to go -- 9 MR. TUCCILLO: Go ahead. 10 BY MR. SAVERY: 11 Q. You just mentioned that it was, as far 12 as you're aware, Mr. Rausch who sold his Biopure 13 stock commensurate with your purchase of Biopure 14 stock, correct? 15 MR. TUCCILLO: Did you say was sold? 16 I'm sorry, I thought you said Mr. Rausch was 17 sold. 18 MR. SAVERY: I can restate the 19 question if there's any confusion. 20 BY MR. SAVERY: 21 Q. You testified just a few minutes ago 22 that it was Mr. Rausch who sold his Biopure 23 stock commensurate with your purchase of Biopure 24 stock at least on one occasion?</p>	<p style="text-align: right;">Page 173</p> <p>1 sale of Biopure stock by Biopure? 2 A. No. 3 MR. SAVERY: That's all I have subject 4 to my earlier statements and reservations. 5 MR. LONGMAN: I have a couple 6 questions. 7 CROSS EXAMINATION 8 BY MR. LONGMAN: 9 Q. Dr. Esposito, earlier Mr. Savery 10 showed you a document marked as Exhibit 48 which 11 was the complaint filed on your behalf in this 12 action. And if you notice, this document has 13 various markings of the court on it, and he 14 asked you if you had seen a document, this 15 document or one similar to it prior to the time 16 a complaint -- prior to the time it was filed. 17 I also want to show you Exhibit 47, 18 which is your certification, and item one in 19 which you state "I have reviewed the complaint 20 being filed on my behalf and on behalf of others 21 similarly situated against Biopure and certain 22 of its officers and authorize its filing or a 23 filing of a substantially similar complaint on 24 my behalf."</p>

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<p>1 Did you sign this certification saying 2 that? 3 A. Yes. 4 MR. SAVERY: Objection to form. 5 Sorry, just leave enough time for me 6 to interpose an objection before you answer. 7 A. Okay. 8 BY MR. LONGMAN: 9 Q. Okay. Does this refresh your 10 recollection that you may have seen a document 11 in some form similar to this, it may have looked 12 differently than the one with all the markings 13 on it, prior to the time it was filed? 14 MR. SAVERY: Objection. 15 A. Yes, because again, I said before, 16 this is the original one that I received a long 17 time ago. I just remember it, and the fact that 18 my name was on it. The markings I can't -- I 19 don't remember. 20 BY MR. LONGMAN: 21 Q. Okay. But you did -- this refreshes 22 your recollection that at the time you signed 23 your certification, which was prior to the time 24 it was filed, you saw this complaint?</p>	<p>Page 174</p> <p>1 MR. SAVERY: Objection. 2 A. Right, you just have to -- 3 MR. LONGMAN: 4 Q. Is that correct? 5 A. Yes, you get your expenses, we're 6 responsible for that. 7 Q. And when you said "fees," did you 8 actually mean that you were responsible for some 9 of our expenses in the event we were 10 unsuccessful? 11 MR. SAVERY: Objection. Leading. 12 BY MR. LONGMAN: 13 Q. Is that correct? 14 A. Yes. 15 MR. LONGMAN: Okay. No further 16 questions. 17 REDIRECT EXAMINATION 18 BY MR. SAVERY: 19 Q. Just relative to Exhibit 47, which is 20 your certification, the first paragraph states 21 "I have reviewed the complaint being filed on my 22 behalf." 23 Am I correct that you don't have a 24 recollection one way or the other whether you</p>
<p>Page 175</p> <p>1 MR. SAVERY: Objection. 2 A. Yes. That's what it says. 3 MR. LONGMAN: 4 Q. Okay. 5 A. Again I can't even recall this thing 6 at all. 7 Q. Okay. One other thing I want to 8 reference. 9 You testified earlier that Mr. Savery 10 was asking you some questions about expenses, 11 and you testified that in the event that we were 12 unsuccessful in this litigation that you would 13 reimburse us for attorney fees. 14 Do you know the difference between 15 fees and expenses? 16 A. Yes, the expenses is what we're 17 responsible for. The fee, that's the 18 contingency fee? 19 Q. Right. 20 A. That's what you folks get if you win, 21 right? 22 Q. Correct. 23 And if we were unsuccessful, we would 24 simply not get a fee, is that correct?</p>	<p>Page 177</p> <p>1 actually reviewed the complaint prior to signing 2 this document? 3 A. That's true. 4 MR. SAVERY: Okay. Nothing further 5 subject to my earlier reservations. 6 MR. HUANG: I just want the record to 7 be clear that all parties that aren't being 8 represented by Mr. Savery and Bingham McCutchen 9 also join in the reservation of all rights to 10 recall Dr. Esposito if he produces further 11 documents or if they amend their designation of 12 him as sub-class representative. 13 MR. TUCCILLO: And our position is the 14 same relative to all defense counsel as it was 15 stated earlier with respect to Mr. Savery. 16 MR. SAVERY: Okay. That's it. 17 (Whereupon, the deposition was 18 concluded at 3:21 p.m.) 19 20 21 22 23 24</p>

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